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Attorneys -- Disbarment -- Failure to Comply with Technical Requirements of Disbarment Statute

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present entrance requirement of two years of college work. The new trustee regulation requiring three years of college preparation for entrance to the Law School will take effect in September, 1932.

For the first time, the law students have a separate dormitory of their own. The Carr Building, adjacent to the Law Building, has been remodeled and set aside for this purpose. It now houses its capacity of 62, all of whom are students in the Law School.

Last winter the faculty of the Law School presented 10 bills to the General Assembly, proposing changes in the procedural law and, to a less extent, changes in the substantive law of the state. Four of these bills became law, including the Uniform Declaratory Judgment Act, as slightly revised by Professor Atwell C. McIntosh of the Law School. To continue the process of law-school participation in law-making thus begun, the legislature created the Law Improvement Commission, to consist of representatives of the Wake Forest, Duke and North Carolina law faculties, and of the laity and the bench and bar. Judge George W. Connor of the Supreme Court is chairman and Albert Coates of the Law School, secretary. The North Carolina Judicial Conference was abolished.

The new Constitutional Revision Commission has accepted the Law School's offer of research assistance in connection with its work, and has invited the Wake Forest College and Duke University Law Schools to participate. In close relation to this work, Professor R. H. Wettach will conduct during the spring semester, a research course in North Carolina Constitutional Law, with especial emphasis on the need for amendment and revision.

NOTES AND COMMENTS

Attorneys—Disbarment—Failure to Comply with Technical Requirements of Disbarment Statute.

The case of *Grievance Committee v. Strickland*[1] is the first in which disbarment proceedings founded upon a charge of "ambulance chasing" have been reviewed by the North Carolina Supreme Court. The accusation, brought by the Grievance Committee of the State Bar Association, was based upon the affidavit of Biggers, but the accused was found guilty only on evidence furnished by Fellos,

[1] Committee on Grievances of the State Bar Association v. Strickland, 200 N. C. 630, 158 S. E. 110 (1931).

whose name appeared for the first time in the solicitor's citation. *Held,* disbarment reversed, on the ground that the bounds of the statute governing such proceedings had been exceeded.

Only in one instance[2] has a disbarment proceeding been decided on appeal unfavorably to a North Carolina attorney. The other decisions rest on one of three technical considerations: (1) strict construction of the statute,[3] (2) dubiously-worded disavowals,[4] and (3) meticulous attention to terminology.[5]

By the majority of decisions, an action for disbarment is not criminal in nature, but rather civil or even *sui generis,* and is to be governed, not by the technical nicety of criminal pleadings, but by rules peculiar to itself.[6] Likewise, nearly all courts agree that punishment of the offending attorney is neither the primary nor the ultimate purpose of the proceeding, but that it is invoked mainly to protect the courts, the profession, and the public from ministration by persons unfit to practice.[7] If the accused is fully and fairly informed of the general nature of the charges against him, and in a broad sense the proof corresponds with the allegations, it has been held that slight variations between proof and allegation are imma-

[2] State v. Johnson, 171 N. C. 799, 88 S. E. 437 (1916).

[3] *Ex parte* Schenck, 65 N. C. 353 (1871) (publishing letter derogatory to superior court judge); Kane v. Haywood, 66 N. C. 1 (1872) (failure to account for client's money).

[4] *In re* Moore, 63 N. C. 397 (1869) [disavowal admits purpose (of publication) was to express disapprobation of the conduct of individuals occupying high judicial stations]; *Ex parte* Biggs, 64 N. C. 202 (1870) (D insisted that by becoming an attorney, he did not surrender any right as editor, and as such was entitled "to fully comment on all public officers").

[5] *In re* Ebbs, 150 N. C. 44, 63 S. E. 190 (1908) ("convicted" held not equivalent to "guilty").

[6] Philbrook v. Newman, 85 Fed. 139 (Circuit Court, Cal., 1898); Maloney v. State, 182 Ark. 510, 32 S. W. (2nd) 423 (1930); Gould v. State, 127 So. 309 (1930); *In re* Ulmer, 268 Mass. 373, 167 N. E. 749 (1929); *Re* Vaughan, 189 Cal. 491, 209 Pac. 353 (1922); People v. Stonecipher, 171 Ill. 506, 111 N. E. 496 (1916) (deposition taken in another state held admissible); *In re* Breidt, 84 N. J. Eq. 222, 94 Atl. 214 (1915); State v. Peck, 88 Conn. 447, 91 Atl. 274 (1914); Bar Association v. Scott, 209 Mass. 200, 95 N. E. 402 (1911) fraud proved in instance other than that named in petition); *In re* Ebbs, *supra* note 5; *In re* Smith, 73 Kan. 743, 85 Pac. 584 (1906); (1921) MINN. L. REV. 141; (1921) CAL. L. REV. 484. *Contra: In re* Eaton, 235 N. W. 587 (1931).

[7] McIntosh v. State Bar, 211 Cal. 261, 294 Pac. 1067 (1930); Gould v. State, *supra* note 6; State v. Kern, 233 N. W. 629 (1930); *In re* Egan, 52 S. D. 394, 218 N. W. 1 (1928); State v. Ledbetter, 127 Okla. 85, 260 Pac. 454 (1927); *Re* Stolen, 193 Wis. 602, 214 N. W. 379 (1927); *Re* Vaughan, *supra* note 6; *Re* Kerl, 32 Idaho 737, 188 Pac. 40 (1920); *In re* Rouss, 221 N. Y. 81, 116 N. E. 782 (1917); *In re* Breidt, *supra* note 6; Bar Association v. Greenhood, 168 Mass. 169, 46 N. E. 568 (1897); *Ex parte* Wall, 107 U. S. 265, 2 Sup. Ct. 569 (1882) (leading case); (1921) 5 MINN. L. REV. 141.

terial.[8] There is also authority for the statements that where the charges are sufficient and clearly apparent upon the face of the complaint, the procedure by which the matter is brought to the attention of the court need not comply with any particular statutory or common-law form, and that discrepancies not invading some substantial right of the respondent are not cause for reversal.[9] Statutes, while they may set up additional grounds for disbarment or define the procedure to be utilized, are usually held to be merely cumulative, and not to limit or impair the inherent constitutional right of the court to deal with such cases in a proper, though non-statutory, way;[10] nor should they be construed as importing to the general assembly an intention to abridge such power.[11]

The statement by the court in the principal case, supported by cases not dealing with disbarment, that a statutory method of procedure, if provided, "is exclusive and must be first resorted to and in the manner specified therein," does not find support in "courts everywhere."[12] But, conceding the statutory provisions to be the basis of the action, the majority opinion appears to have misconstrued the requirements of the statute. Though it is provided that proceedings "shall be instituted and prosecuted only by the Committee on Grievances of the North Carolina State Bar Association,"[13]

[8] Bar Association of Boston v. Scott, *supra* note 6.

[9] *In re* Ulmer, *supra* note 6; *In re* Bailey, 30 Ariz. 407, 248 Pac. 29 (1926); State v. Peck, *supra* note 6 (complaint in narrative form); Hess v. Conway, 93 Kan. 246, 144 Pac. 205 (1914); Bar Association v. Scott, *supra* note 6; *In re* Smith, *supra* note 6; State v. Hays, 64 W. Va. 45, 61 S. E. 355 (1908); Bar Association v. Greenhood, *supra* note 7; *In re* Lowenthal, 78 Cal. 427, 21 Pac. 7 (1889) (facts stated in narrative form, no allegations connecting them with charges); *Ex parte* Wall, *supra* note 7.

[10] *In re* Eaton, *supra* note 6; Gould v. State, *supra* note 6; *In re* Royall, 34 N. M. 554, 286 Pac. 156 (1930); *Re* Cohen, 261 Mass. 484, 159 N. E. 495 (1928); State v. Cannon, 196 Wis. 534, 221 N. W. 603 (1928); *Re* Law Association, 288 Pa. 331, 135 Atl. 732 (1927); State v. Ledbetter, *supra* note 7; Hertz v. U. S., 18 F. (2nd) 52 (C. C. A. Eighth Circuit, 1927); *In re* Wolfe's Disbarment, 288 Pa. 331, 135 Atl. 732 (1927); State v. Reynolds, 22 N. M. 1, 158 Pac. 413 (1916); People v. Harris, 273 Ill. 413, 112 N. E. 978 (1916) (allowing of testimony by unauthorized relator held no objection); Bar Commissioners v. Sullivan, 35 Okla. 745, 131 Pac. 703 (1912); Wernimont v. State, 101 Ark. 210, 142 S. W. 194 (1911); *In re* Tharcher, 80 Ohio St. 492, 89 N. E. 39 (1909); *In re* Egan, 22 S. D. 355, 117 N. W. 874 (1908); *Ex parte* Schenck, *supra* note 3; (1928) 37 YALE L. J. 1154; (1928) 13 MINN. L. REV. 62; see Snyder's Case, 301 Pa. 276, 152 Atl. 33 (1930).

[11] *In re* Egan, *supra* note 10; Hale v. State, 55 Ohio St. 210, 45 N. E. 199 (1896).

[12] *In re* Bailey, *supra* note 9; *Re* Law Association, *supra* note 10; *In re* Wolfe's Disbarment, *supra* note 10; Bar Commissioners v. Sullivan, *supra* note 10; *In re* Thatcher, *supra* note 10.

[13] N. C. ANN. CODE (Michie, 1927) §208.

there is also a requirement that in all cases the solicitor shall "appear and prosecute the accusation and be responsible for the faithful discharge of the duties required of him."[14] It is submitted that the statute requires only that charges be initiated or "instituted" by the grievance committee, and the solicitor, in securing additional affidavits, merely "faithfully discharged" his duties.[15]

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Bankruptcy—Proof of Contingent Claims.

The Supreme Court of the United States in the case of *Maynard v. Elliott*[1] held that the liability of a bankrupt as endorser of negotiable notes, some of which did not mature for more than a year after the filing of the petition in bankruptcy, was a provable claim against his estate.

Section 63 of the present bankruptcy act in providing for claims provable against the estate of a bankrupt makes no specific provision for the proof of contingent claims.[2] The status of the claim at the time of the filing of the petition determines whether or not it is provable.[3] Hence the provability of contingent claims founded upon contract depends on whether subdivision (1)[4] of this section to the

[14] N. C. ANN. CODE (Michie, 1927) §214.

[15] See People v. Harris, *supra* note 10.

Cited in appellant's brief were: *In re* Evans, 130 Pac. 217 (Utah, 1913); Bar Association v. Sullivan, 185 Cal. 621, 198 Pac. 7 (1921); *In re* Hudson, 36 Pac. 812 (Cal., 1894); Grievance Committee v. Ennis, 84 Conn. 594, 80 Atl. 767 (1911); and People v. Matthews, 217 Ill. 94, 75 N. E. 444 (1905). Three of these would seem to be not in point. The first decision rests upon the fact that the petitioners were condemned unheard on charges concerning which no evidence had been adduced; in the second case no misconduct other than that specifically charged was alleged in the accusation or included in charges filed; and the last reversal was due to the lack of an affidavit to support the information. Nor did the fourth case turn alone on the technical point involved, since the deficiency in the complaint was only "another reason" for setting aside the order for suspension.

[1] 283 U. S. 273, 51 Sup. Ct. 390, 75 L. ed. 518 (1931) [reversing 40 F. (2d) 17 (C. C. A. 6th, 1930)].

[2] 30 Stat. 562 (1898) 11 U. S. C. A. §103 (1927). "A contingent claim is one as to which it remains uncertain, at the time of the filing of the petition in bankruptcy, whether or not the bankrupt will ever become liable to pay it." *In re* Mullings Clothing Co., 238 Fed. 58, 67 (C. C. A. 2nd, 1916); (1927) 12 MINN. L. REV. 60, n. 1.

[3] Zavelo v. Reeves, 227 U. S. 625, 33 Sup. Ct. 365, 57 L. ed. 676 (1913); Swartz v. Fourth National Bank, 117 Fed. 1 (C. C. A. 8th, 1902); *In re* Bingham, 94 Fed. 796 (D. Vt. 1899).

[4] (A) Debts of the bankrupt may be proved and allowed against his estate which are (1) a fixed liability, as evidenced by a judgment or an instrument in writing, absolutely owing at the time of the filing of the petition against him, . . . Bankruptcy Act, of 1898, *supra* note 2.